IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4159 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

BHAGWANJI HANSRAJ - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1.

MR MUKESH H RATHOD for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 30/06/2005

ORAL JUDGMENT

1.By filing this petition, the petitioner has prayed to issue writ of certiorari and / or any other appropriate writ, order or direction quashing and setting aside the impugned award dated 03.08.1999 passed by the learned

Presiding Officer, Labour Court, Junagadh in Reference (LCJ) No. 218 of 1995.

2. It appears from the record that the respondent workman was an employee of the petitioner corporation and was working as conductor. It is the case of the petitioner that at the relevant time, when he was on duty on 14.03.1983 the bus was inspected by the inspection squad wherein it was found that though the number of passengers have made the payment of fare, they have not been issued the tickets and the statements of the said passengers were also recorded. It is also the case of the petitioner that the respondent refused to sign the statements and has not extended the cooperation to the inspection squad and therefore, the statement of the driver was recorded. It is the case of the petitioner that thereafter inspection squad made a report in this regard and thereafter charge sheet was issued to the respondent workman and a full fledged inquiry was conducted against the respondent and ultimately, the charges so levelled against the respondent were proved and he was dismissed from service vide order dated 22.07.1994. Being aggrieved by the said order, the respondent raised the industrial dispute which was numbered as Reference (LCJ) No. 218 of 1995. The Labour Court, after appreciating the evidence on record

and hearing both the sides, passed the judgment and award dated 03.08.1990 quashing and setting aside the dismissal order dated 22.07.1994 and also passed the order to pay 50% of the back wages including all the consequential benefits. Being aggrieved and dissatisfied with judgment and award dated 03.08.1990 in Reference (LCJ) No. 218 of 1995 passed by the Labour Court, Junagadh, the petitioner has preferred the present petition under Article 226 and 227 of the Constitution of India.

3.Heard the learned advocates for the parties.

4.Mr.H.S.Munshaw, learned advocate appearing for the petitioner corporation has submitted that the Labour Court has failed to consider the fact that the respondent workman had collected fare from the passengers and had not issued the tickets and the statements to that effect were given in writing by the passengers in the presence of the driver as well as the members of the inspection squad. He further submitted that the respondent was totally non-cooperative during the departmental proceedings and had not permitted the inspection squad to check the way bill and, therefore, the respondent has committed misconduct. He submitted that the Labour Court has not taken into consideration the past conduct of the respondent workman. It is,

therefore, requested to allow the present petition.

5. On the other hand, Mr.Rathod, learned advocate appearing for the respondent workman has opposed this petition and has submitted that the petitioner corporation has not examined any independent witness in the course of departmental inquiry as well as the passengers, whose statements were recorded and, therefore, the Labour Court has rightly come to the conclusion that the charge levelled against the respondent workman has not been proved by the petitioner. It is submitted that the procedure of booking was not closed and the respondent was discharging his duty and was doing road booking and the process of issuance of tickets was going on and, therefore, it cannot be said that charge of misappropriation is made out but it can be said that the respondent workman has failed to issue the tickets to the passengers after collecting the fare. He submitted that when the Labour Court has exercised the powers under Section 11-A of the Industrial Disputes Act, 1947 and after appreciating the evidence on record has come to the conclusion that the charge against the workman of misappropriation was not at all established, this Court may not interfere with the judgment and order passed by the Labour Court under Article 227 of

the Constitution of India. It is therefore, requested to dismiss the present petition.

6. Having heard the learned advocates for the parties and having perused the material on record, it appears that the Labour Court, while considering the matter, has come to the conclusion that it is not proved prima facie that the workman has admitted the guilt in the departmental proceedings. The Labour Court has also come to the conclusion that no independent witness has been examined in the departmental proceedings and even looking to the deposition of the reporter, the charge levelled against the respondent is not proved. Once the Labour Court has come to the conclusion that charges levelled against the respondent workman have not been proved, the question of considering the past record of the respondent workman does not arise. It is required to be noted that the past record of the respondent workman is required to be considered only when the charge levelled against the respondent has been proved and not otherwise. Admittedly, in the present case, the Labour Court has come to the conclusion that the charge levelled against the respondent workman has not been proved. Under the circumstances, I am of the view that the Labour Court is justified in not considering the past record of the

respondent workman.

7. In the facts and circumstances of the case, therefore, it cannot be said that the Labour Court has committed any jurisdictional error or material irregularity in directing the petitioner corporation to reinstate the respondent workman on his original position with continuity of service. No jurisdictional error has been committed by the Labour Court while passing the impugned award in exercise of the power under Section 11-A of the Industrial Disputes Act, which requires interference of this Court under Article 226/227 of the Constitution of India. However, in the peculiar facts and circumstances of the case, the respondent workman is not entitled to the 50% back wages as has been awarded by the Labour Court.

8. In view of the aforesaid discussion, the judgment and award passed by the Labour Court dated 03.08.1990 in Reference (LCJ) No. 218 of 1995 is modified to the effect that the petitioner corporation is directed to reinstate the respondent in service without back wages with continuity of service and all consequential benefits. The petitioner corporation is directed to reinstate the respondent workman as per the judgment of this court as early as possible, preferably within a period of one month from the date of the receipt of the

writ of this court, if not reinstated so far. This petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(SHARAD D DAVE, J)

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